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Ex Parte

February 3, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: CG Docket No. 02-386

Dear Ms. Dortch:

Americatel Corporation (“Americatel”)¹ urges the Federal Communications Commission (“Commission” or “FCC”) to decide all issues in above-listed proceeding at the same time and not to grant the request made by AT&T, WorldCom (a/k/a MCI) and Sprint (collectively the “Joint Petitioners”) that their issues be decided before those raised by Americatel.² As explained below, a failure of the Commission to grant relief to Americatel at the same time as the FCC does for the Joint Petitioners will mean that Americatel will continue to suffer significant financial harm because it cannot successfully bill for a notable portion of its traffic and will also further weaken long distance competition by impairing Americatel’s ability and likely the ability of all dial-around carriers to stay in the market.

In September 2002, well over one year ago, Americatel filed with the Commission a petition for declaratory ruling.³ Americatel requested that the FCC issue a declaratory ruling stating that all local exchange carriers (“LECs”) have an obligation to provide all carriers with mandatory access to Billing Name and Address (“BNA”) information and imposing a requirement that all carriers exchange

¹ Americatel, a Delaware corporation that is a subsidiary of ENTEL Chile, is a common carrier providing domestic and international telecommunications services. Americatel also operates as an Internet Service Provider (“ISP”). Americatel specializes in serving Hispanic communities throughout the United States, offering presubscribed (1+), dial-around, and prepaid long distance services, as well as private line and other high-speed services to its business customers. The majority of traffic carried by Americatel is dial-around in nature.

² See Letter from Michael B. Fingerhut, Sprint Corporation, to Marlene Dortch, FCC, dated June 19, 2003 (“June 19 Ex Parte”).

³ Americatel’s Petition for Declaratory Ruling (filed September 5, 2002).

customer billing information under specific parameters developed by the industry through the Ordering and Billing Forum (“OBF”).

In late November 2002, the Joint Petitioners filed their request for a new rule that would oblige all carriers to meet mandatory minimum Customer Account Record Exchange (“CARE”) requirements.⁴ The two requests were combined into a single docket and placed on public notice for comment in December 2002.⁵ As noted above, the Joint Petitioners have requested that their proposal be addressed before Americatel’s, even though its petition was filed two full months earlier. That result would be both unfair and wrong. All issues should be decided by the FCC at the same time.

As is fully detailed in the record in this proceeding,⁶ the advent of local competition has had the unintended secondary consequence of creating situations where dial-around carriers cannot bill for their services because they are not aware of the identity of the LEC serving customers making dial-around calls. As the Commission is well aware, dial-around carriers do not have any information identifying their customer’s name or billing address. The only information available to a dial-around carrier is the caller’s ANI (Automatic Number Information) data. In a market where all consumers received their local service from the incumbent LEC, the dial-around carrier only needed to send the ANI information to the incumbent LEC, which, in turn, would provide either Billing & Collection Service or BNA information, from which the dial-around carrier could prepare its own bills for services.

Now that some consumers have moved to competitive LECs, however, dial-around carriers cannot fairly assume that the incumbent LEC provides local service for all customers. Moreover, a dial-around carrier does not have a reasonable way to determine which individual LEC serves specific ANI listings. Accordingly, a dial-around carrier must still send its ANI information for dial-around traffic to the incumbent LEC (or a competitive LEC serving the ANI account when the dial-around carrier knows that carrier’s identity). However, if the dial-around customer is no longer served by the LEC to which the ANI information is sent, the dial-around carrier is only informed that the LEC no longer serves the telephone number in question and is not told which other carrier serves such telephone number.⁷ Thus, a dial-around carrier is simply left to its own devices to obtain sufficient

⁴ Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (filed November 22, 2002).

⁵ Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking Filed by Americatel Corporation; Pleading Cycle Established for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers Filed by AT&T Corp., Sprint Corporation, and WorldCom, CG Docket No. 02-386, Public Notice, DA 02-3550 (rel. Dec. 20, 2002).

⁶ Americatel’s Petition for Declaratory Ruling (filed September 5, 2002); Americatel’s Comments in CG Docket No. 02-386 (filed January 21, 2003); and Americatel’s Reply Comments in CG Docket No. 02-386 (filed February 4, 2003).

⁷ The first LEC generally knows the identity of its ex-customer’s new LEC since the first LEC most likely ported that customer’s telephone number to the second LEC. Moreover, the OBF has already established the parameters for a database solution to this problem. Comments of Intrado, Inc., filed February 21, 2003, at 7-8.

information to render a bill for the services its provides. When it cannot obtain that information, as is true in most cases, the dial-around carrier winds up providing services for nothing.

As Americatel previously stated in a filing made in connection with this proceeding, the dollar amount of Americatel's unbillable calls due to a lack of billing information increased by 300% from 1999-2001. Unbillable calls constituted a full six percent of Americatel's long distance revenues for 2001 and amounted to a full \$6.4 million in 2002.⁸ Because of aggressive management of its accounts in 2003, Americatel's volume of unbillable calls declined to \$4.7 million, but only because of affirmative actions that resulted in the loss of actual customers who, with access to accurate and current billing information, Americatel would have been able to retain and continue to serve. Even with these actions, unbillable calls still accounted for approximately 3.5% of 2003 revenues. On the other hand, when Americatel is able to bill its customers based on LEC-provided BNA information, Americatel normally collects more than 91% of all charges for dial-around traffic.⁹

During 2003, the Joint Petitioners informally suggested to Americatel that, since they are large competitive LECs as well as long distance carriers, they might be able to provide Americatel with access to billing information regarding the Joint Petitioners' local customers who make dial-around calls on Americatel's network. To that end, Americatel negotiated a customer information exchange agreement with AT&T. Pursuant to this agreement, AT&T has provided Americatel with customer identification information for some, but not even most, of those telephone numbers served by AT&T as a CLEC that also made dial-around calls on Americatel's network. As of February 1, 2003, AT&T has provided Americatel with BNA information for only 2.82% of the ANI listings sent by Americatel to AT&T. While Americatel remains hopeful that AT&T's performance will improve substantially over time, the agreement with AT&T simply has not solved Americatel's problem.

Americatel's experience with MCI has been more satisfactory. While MCI would not sign a written customer information exchange agreement with Americatel, MCI agreed verbally in July 2003 to exchange BNA information with Americatel. MCI has been able to provide Americatel with BNA information for 16% of the ANI listings submitted to MCI by Americatel. Nevertheless, solving 16% of a problem cannot be regarded as an acceptable result. Americatel has not approached Sprint to begin negotiations for a customer information exchange agreement, in part, because it has become crystal clear that a better solution is necessary.

Americatel is appreciative of the efforts made by the Joint Petitioners to assist in solving Americatel's problem with unbillable calls. Those efforts have produced some improvement in the number of calls that can ultimately billed by Americatel. However, what those efforts have really done is demonstrated the depth and complexity of the problem. It seems very clear that the dial-around industry needs the FCC to mandate timely access to BNA information from all LECs, as contemplated by the OBF's billing information database. Moreover, as Intrado, Inc. argued in its original comments

⁸ Americatel *ex parte* filing in CG Docket No. 02-386, dated April 17, 2003.

⁹ *Id.* It is important to note, however, that even when dial-around carriers can ultimately identify their callers after a time-consuming search and then bill customers, it becomes more difficult to collect those bills because of the time lag between when service was provided and the rendering of bills.

in this proceeding, the Commission must set a deadline for the industry to complete and implement this database solution.¹⁰ Similarly, all LECs, unless exempted by the FCC because they operate only in rural markets, must be required to participate in this database. Otherwise, it will be difficult, if not impossible, for the dial-around industry to remain financially viable in order to provide additional choices for consumers, many of whom are lower-income and less sophisticated than are presubscribed callers.¹¹

In sum, Americatele still needs the relief requested in its original petition, just as the Joint Petitioners need the adoption of mandatory minimum CARE obligations for all carriers. Both sets of requests are reasonable and should be addressed by the FCC at the same time, rather than on a seriatim basis, with the dial-around issues left dangling indefinitely. The plain and simple truth is that Americatele simply cannot even hope to devote the same level of resources toward advocating its positions to the FCC that are devoted by a combined AT&T, MCI and Sprint. Accordingly, to the extent that the Commission were to bifurcate the issues in this proceeding and to address those raised by the Joint Petitioners first, it becomes quite likely that Americatele's concerns will never be addressed by the FCC at all. Americatele's caboose must be coupled to the Joint Petitioners' train if Americatele is to obtain relief from the FCC. Therefore, Americatele strongly urges the FCC to reject bifurcation and address all of the issues in the same decision.

¹⁰ Comments of Intrado, Inc., at 7-8.

¹¹ See Americatele's Petition for Declaratory Ruling, at 15-16.

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Reed Smith

Please place a copy of this letter in the official record for this proceeding. Copies of the this letter are also being sent to each Commissioner's Office, as noted below.

Very truly yours,
Reed Smith LLP

By _____
Judith L. Harris
Robert H. Jackson
Counsel for Americatel Corporation

cc: Christopher Libertelli, Chairman Powell's Office
Mathew Brill, Commissioner Abernathy's Office
Jessica Rosenworcel, Commissioner Copps' Office
Daniel Gonzalez, Commissioner Martin's Office
Scott Bergmann, Commissioner Adelstein's Office